

# HOUSE BILL No. 1307

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-3.5; IC 6-6-12; IC 8-14-2-4.

**Synopsis:** County motor fuel tax. Provides that a county that does not have a county motor vehicle excise surtax and a county wheel tax may impose a county motor fuel tax at a rate of \$0.01 or \$0.02 per gallon of gasoline or special fuel. Requires that a county that imposes the tax must follow the procedures for adoption under the county option income tax. Prohibits the adoption of the county motor vehicle excise surtax and county wheel tax if the county motor fuel tax is in effect. Establishes a state general fund account and county and city and town motor fuel tax funds for a county in which the county motor fuel tax is imposed. Requires revenue to be collected by the state and distributed to the county and the cities and towns in the county. Provides that part of the revenue is distributed in the same manner as funds from the local road and street account. Allows the issuance of bonds payable from county and city and town motor fuel tax funds.

**Effective:** July 1, 2003.

**Kruse**

January 13, 2003, read first time and referred to Committee on Ways and Means.



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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1307

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A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 6-3.5-4-2 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The county  
3 council of any county may, subject to the limitation imposed by  
4 subsection (c), adopt an ordinance to impose an annual license excise  
5 surtax at the same rate or amount on each motor vehicle listed in  
6 subsection (b) that is registered in the county. The county council may  
7 impose the surtax either:  
8 (1) at a rate of not less than two percent (2%) nor more than ten  
9 percent (10%); or  
10 (2) at a specific amount of at least seven dollars and fifty cents  
11 (\$7.50) and not more than twenty-five dollars (\$25).  
12 However, the surtax on a vehicle may not be less than seven dollars and  
13 fifty cents (\$7.50). The county council shall state the surtax rate or  
14 amount in the ordinance which imposes the tax.  
15 (b) The license excise surtax applies to the following vehicles:  
16 (1) Passenger vehicles.  
17 (2) Motorcycles.



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(3) Trucks with a declared gross weight that does not exceed eleven thousand (11,000) pounds.

(c) The county council may not adopt an ordinance to impose the surtax unless:

(1) it concurrently adopts an ordinance under IC 6-3.5-5 to impose the wheel tax; **and**

**(2) the county motor fuel tax under IC 6-6-12 is not in effect on July 1 of the year in which the ordinance under this subsection is adopted.**

(d) Notwithstanding any other provision of this chapter or IC 6-3.5-5, ordinances adopted by a county council before June 1, 1983, to impose or change the annual license excise surtax and the annual wheel tax in the county remain in effect until the ordinances are amended or repealed under this chapter or IC 6-3.5-5.

SECTION 2. IC 6-3.5-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) The county council of any county may, subject to the limitation imposed by subsection (b), adopt an ordinance to impose an annual wheel tax on each vehicle which:

(1) is included in one (1) of the classes of vehicles listed in section 3 of this chapter;

(2) is not exempt from the wheel tax under section 4 of this chapter; and

(3) is registered in the county.

(b) The county council of a county may not adopt an ordinance to impose the wheel tax unless:

(1) it concurrently adopts an ordinance under IC 6-3.5-4 to impose the annual license excise surtax; **and**

**(2) the county motor fuel tax under IC 6-6-12 is not in effect on July 1 of the year in which the ordinance under this subsection is adopted.**

(c) The county council may impose the wheel tax at a different rate for each of the classes of vehicles listed in section 3 of this chapter. In addition, the county council may establish different rates within the classes of buses, semitrailers, trailers, tractors, and trucks based on weight classifications of those vehicles that are established by the bureau of motor vehicles for use throughout Indiana. However, the wheel tax rate for a particular class or weight classification of vehicles may not be less than five dollars (\$5) and may not exceed forty dollars (\$40). The county council shall state the initial wheel tax rates in the ordinance that imposes the tax.

SECTION 3. IC 6-6-12 IS ADDED TO THE INDIANA CODE AS



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A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

**Chapter 12. County Motor Fuel Tax**

**Sec. 1.** As used in this chapter, "department" means the department of state revenue.

**Sec. 2.** As used in this chapter, "fiscal body" has the meaning set forth in IC 36-1-2-6.

**Sec. 3.** As used in this chapter, "supplier" means a distributor or a person who sells gasoline.

**Sec. 4.** Except as otherwise provided in this chapter, the definitions in IC 6-6-1.1-103 and IC 6-6-2.5 apply throughout this chapter.

**Sec. 5. (a)** A county motor fuel tax council is established on January 1 for each county in Indiana that will not have the county excise surtax and county wheel tax in effect for registrations in that year. The membership of each county motor tax council consists of the fiscal body of the county and the fiscal body of each city or town that is located partially or entirely within the county.

**(b)** In the case of a city or town that is located within more than one (1) county, the county auditor of each county shall base the allocations required by subsection (c) on the population of that part of the city or town that is located within the county where the allocations are being made.

**(c)** Each county motor fuel tax council has a total of one hundred (100) votes. Each member of the county motor fuel tax council is allocated a percentage of the one hundred (100) votes that may be cast. The percentage that a city or town is allocated for a year equals the same percentage that the population of the city or town bears to the population of the county. The percentage that the county is allocated for a year equals the percentage that the population of all areas in the county not located in a city or town bears to the population of the county. Before January 1 of each year, the county auditor shall certify to each member of the county motor fuel tax council the number of votes, rounded to the nearest one-hundredth (0.01), that each member of the county motor fuel tax council has for that year.

**Sec. 6. (a)** The county motor fuel tax may be imposed by the county motor fuel tax council on the sale within the county of:

- (1) gasoline subject to the gasoline tax under IC 6-6-1.1; and
- (2) special fuel that is subject to the special fuel tax under IC 6-6-2.5, including the placing of special fuel into the taxable storage facility of an authorized unlicensed user or an

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1 authorized unlicensed special fuel dealer.

2 (b) The county motor fuel tax may be imposed at a rate of:

3 (1) one cent (\$0.01); or

4 (2) two cents (\$0.02);

5 for each gallon of gasoline and special fuel.

6 (c) Distributors, dealers, users, and all persons selling gasoline  
7 or special fuel must state the rate of the county motor fuel tax  
8 separately on every statement showing the price of gasoline or  
9 special fuel.

10 Sec. 7. (a) To impose the county motor fuel tax, a county motor  
11 fuel tax council must:

12 (1) use the procedures used in IC 6-3.5-6 for imposing the  
13 county option income tax; and

14 (2) after January 1 but before April 1 of the year the tax takes  
15 effect, pass a recommendation regarding the imposition of the  
16 county motor fuel tax in a form that substantially states the  
17 following:

18 "We recommend that the county motor fuel tax be  
19 imposed at a rate of \_\_\_ cents (\$0.\_\_) for each gallon of  
20 gasoline and special fuel sold within \_\_\_\_\_ County.  
21 This tax takes effect July 1 of this year."

22 (b) A recommendation by the county motor fuel tax council  
23 must be adopted by ordinance by the county fiscal body before the  
24 tax may take effect. If a recommendation made by a county motor  
25 fuel tax council is not adopted by ordinance by the county fiscal  
26 body before July 1, that particular recommendation for the  
27 ordinance expires.

28 (c) The county auditor shall record all votes taken by the fiscal  
29 body regarding ordinances under this chapter and shall  
30 immediately certify the results to the department.

31 (d) An ordinance under this chapter adopted by the county  
32 fiscal body takes effect July 1 of the year the ordinance is adopted.

33 Sec. 8. Except as permitted by this chapter, a city, town, county,  
34 township, or municipal corporation may not impose:

35 (1) an excise tax on or measured by the sale, receipt,  
36 distribution, or use of gasoline; or

37 (2) an excise tax, a privilege tax, or an occupational tax on the  
38 business of manufacturing, selling, or distributing gasoline.

39 Sec. 9. (a) The county motor fuel tax council may recommend a  
40 decrease or increase in the county motor fuel tax rate. To decrease  
41 or increase the county motor fuel tax rate, the county motor fuel  
42 tax council must, after January 1 but before April 1, adopt a

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1 resolution that substantially states the following:

2 "We recommend that the county motor fuel tax rate be  
3 decreased (increased) from a rate of \_\_\_\_ cents (\$0.\_\_\_\_) for  
4 each gallon of gasoline and special fuel sold to a rate of  
5 \_\_\_\_cents (\$0.\_\_\_\_) for each gallon of gasoline and special fuel  
6 sold within \_\_\_\_\_ County. This decrease (increase) takes  
7 effect July 1 of this year."

8 (b) A recommendation by the county motor fuel tax council  
9 must be adopted by ordinance by the county fiscal body before the  
10 decrease or increase may take effect. If a recommendation made by  
11 a county motor fuel tax council is not adopted by ordinance by the  
12 county fiscal body before July 1, that particular recommendation  
13 for the ordinance expires.

14 (c) The county auditor shall record all votes taken by the fiscal  
15 body regarding ordinances under this chapter and shall  
16 immediately certify the results to the department.

17 (d) An ordinance under this chapter adopted by the county  
18 fiscal body takes effect July 1 of the year the ordinance is adopted.

19 Sec. 10. (a) The county motor fuel tax council may recommend  
20 rescinding the county motor fuel tax rate. To rescind the county  
21 motor fuel tax rate, the county motor fuel tax council must, after  
22 January 1 but before April 1, adopt a resolution that substantially  
23 states the following:

24 "We recommend the county motor fuel tax rate be rescinded  
25 within \_\_\_\_\_ County effective July 1 of this year."

26 (b) A recommendation by the county motor fuel tax council  
27 must be adopted by ordinance by the county fiscal body before the  
28 rescission may take effect. If a recommendation made by a county  
29 motor fuel tax council is not adopted by ordinance by the county  
30 fiscal body before July 1, that particular recommendation for the  
31 ordinance expires.

32 (c) The auditor of a county shall record all votes taken by the  
33 fiscal body regarding ordinances under this chapter and shall  
34 immediately certify the results to the department.

35 (d) An ordinance under this chapter adopted by the county  
36 fiscal body takes effect July 1 of the year the ordinance is adopted.

37 Sec. 11. (a) A person that purchases gasoline shall initially pay  
38 the tax on the billed gallonage of all gasoline the person receives in  
39 the county. The person shall then add the per gallon amount of tax  
40 to the selling price of each gallon of gasoline sold in Indiana and  
41 collect the tax from the purchaser so that the ultimate consumer  
42 bears the burden of the tax.

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(b) A person required to pay special fuel taxes under IC 6-6-2.5 shall remit the tax due under this chapter for taxable special fuel that is purchased in a county that has imposed the county motor fuel tax.

Sec. 12. A person desiring to receive gasoline within a county with a county motor vehicle fuel tax without paying gasoline tax to the person's supplier must hold an uncanceled license under IC 6-6-1.1 issued by the administrator to do business as a distributor.

Sec. 13. To determine a person's tax liability under this chapter, the person shall file with the administrator not later than the twentieth day of each calendar month a sworn report that includes an itemized statement of the number of invoiced gallons of gasoline or special fuel received by the person in each county with a county motor vehicle fuel tax.

Sec. 14. At the time of filing each monthly report, each person shall pay to the department the full amount of tax due under this chapter for the preceding calendar month. The payment must be included with the payment of gasoline taxes under IC 6-6-1.1 or special fuel taxes under IC 6-6-2.5.

Sec. 15. Every person other than a licensed distributor that purchases or otherwise acquires taxable gasoline and unknowingly fails to pay the gasoline tax to either a licensed Indiana distributor or a licensed Indiana dealer shall make the same reports and payment required of distributors under this chapter. However, the person is not entitled to any deductions or credits.

Sec. 16. Until a person pays to the department the county motor fuel tax on gasoline or special fuel the person receives, the tax money collected is state money. A person who collects the tax shall hold it in trust for the state and for payment to the department as provided in this chapter. In the case of a corporate or partnership distributor, every officer, employee, or member of the employer who in that capacity is under a duty to collect the tax is personally liable for the tax, penalty, and interest.

Sec. 17. (a) Notwithstanding any other provision, a special fuel user may pay the tax imposed by this chapter to the user's supplier if:

- (1) the supplier is a licensed special fuel dealer; and
- (2) the special fuel user, supplier, and administrator enter into a written agreement authorizing payment of the tax in that manner.

(b) A special fuel dealer may pay the tax imposed by this



chapter to the dealer's supplier if the:

- (1) supplier is a licensed special fuel dealer;
- (2) special fuel dealer has not more than two (2) taxable special fuel pumps at any business location; and
- (3) special fuel dealer, supplier, and administrator enter into a written agreement authorizing payment of the tax in that manner.

(c) Upon agreement under this section, the administrator shall notify concerned parties in writing of the authorization granted.

(d) Authorizations under this section are effective upon the date determined by the administrator.

(e) All taxes due and payable before the effective date of an agreement under this section must be paid in full before the effective date of the agreement.

(f) A party to an agreement under this section may terminate the agreement with thirty (30) days written notice to the other parties.

(g) A separate agreement is necessary for each supplier to whom the tax will be paid under this section.

(h) A person that pays taxes under this section does not have to file the monthly reports under section 13 of this chapter.

**Sec. 18. (a)** There is established in the state general fund a county motor fuel tax account for each county that adopts a county motor fuel tax.

(b) Revenue generated by the county motor fuel tax from each county that adopts the tax shall be placed into that county's motor fuel tax account in the state general fund.

(c) Income earned on each county motor fuel tax account becomes a part of that account.

(d) The money in the county motor fuel tax account does not revert to the state general fund.

**Sec. 19. (a)** Revenue derived from the imposition of the county motor fuel tax shall, in the manner prescribed by this section, be distributed to the county that imposed the tax. The amount that is to be distributed to a county during an ensuing calendar year equals the amount of county motor fuel tax revenue that the department, after reviewing the recommendation of the budget agency, estimates will be received from that county during the twelve (12) month period beginning July 1 of the immediately preceding calendar year and ending June 30 of the ensuing calendar year.

(b) Before June 16 of each calendar year, the department, after

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1 reviewing the recommendation of the budget agency, shall estimate  
 2 and certify to the county auditor of each adopting county the  
 3 amount of county motor fuel tax revenue that will be collected  
 4 from that county during the twelve (12) month period beginning  
 5 July 1 of that calendar year and ending June 30 of the immediately  
 6 succeeding calendar year. The amount certified is the county's  
 7 "certified distribution" for the immediately succeeding calendar  
 8 year. The amount certified may be adjusted under subsection (c)  
 9 or (d).

10 (c) The department may certify to an adopting county an  
 11 amount that is greater than the estimated twelve (12) month  
 12 revenue collection if the department, after reviewing the  
 13 recommendation of the budget agency, determines that there will  
 14 be a greater amount of revenue available for distribution from the  
 15 county's account established under section 18 of this chapter.

16 (d) The department may certify an amount less than the  
 17 estimated twelve (12) month revenue collection if the department,  
 18 after reviewing the recommendation of the budget agency,  
 19 determines that a part of those collections needs to be distributed  
 20 during the current calendar year so that the county will receive its  
 21 full certified distribution for the current calendar year.

22 (e) One-twelfth (1/12) of each adopting county's certified  
 23 distribution for a calendar year shall be distributed from its  
 24 account established under section 18 of this chapter to the  
 25 appropriate county treasurer on the first day of each month of that  
 26 calendar year.

27 (f) Upon receipt, each monthly payment of a county's certified  
 28 distribution shall be allocated among, distributed to, and used by  
 29 the county, cities in the county, and towns in the county as  
 30 provided in section 20 of this chapter.

31 (g) All distributions from an account established under section  
 32 18 of this chapter shall be made by warrants issued by the auditor  
 33 of state to the treasurer of state ordering the appropriate  
 34 payments.

35 Sec. 20. (a) The certified distributions received by the county  
 36 shall be distributed by the county auditor as follows:

37 (1) Seventy-five percent (75%) of the certified distribution  
 38 shall be distributed as follows:

39 (A) Thirty-two percent (32%) of the amount is to be  
 40 divided among the cities and towns in the county according  
 41 to the population of the city or town in relation to the  
 42 county population.

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(B) Sixty-eight percent (68%) of the amount is for the county.

(2) Twenty-five percent (25%) of the certified distribution shall be distributed in the same manner as money from the local road and street account is allocated to the county under IC 8-14-2.

(b) The department of transportation shall provide each county with the fractional amount of the distribution the county is entitled to receive under subsection (a)(2).

(c) Distributions received by a county, city, or town under this section shall be deposited into the motor fuel tax fund established in the particular unit.

**Sec. 21.** Revenues from the motor fuel tax fund may be used as follows:

(1) The money distributed to cities and towns shall be annually budgeted as required by law and may be used only:

(A) for the maintenance and improvement of:

- (i) streets;
- (ii) roads; and
- (iii) alleys; or

(B) to pay bonds issued under section 22 of this chapter.

(2) The money distributed to counties shall be annually budgeted as required by law and may be used only:

(A) for the maintenance and improvement of:

- (i) county highways; or
- (ii) bridges on county highways; or

(B) to pay bonds issued under section 22 of this chapter.

**Sec. 22. (a)** The fiscal body of a county, city, or town may issue bonds payable from the unit's motor fuel tax fund. The bonds shall be for the purposes set forth in section 21 of this chapter.

(b) If there are bonds outstanding that have been issued under this section, the county motor fuel tax council and the county fiscal body may not reduce the county motor fuel tax rate below a rate that would produce one and twenty-five hundredths (1.25) times the total of the highest annual debt service on the bonds to the bonds' final maturity, based on an average of the tax collections for the immediately preceding three (3) years. If the tax has not been imposed for the preceding three (3) years, the county motor fuel tax council and the county fiscal body may not reduce the rate below a rate that would produce one and twenty-five hundredths (1.25) times the total of the highest annual debt service, based upon a study by a qualified public accountant or financial adviser.

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1 (c) IC 6-1.1-20 does not apply to the issuance of bonds under this  
2 section.

3 (d) Bonds issued under this section may be sold at a public sale  
4 in accordance with IC 5-1-11 or may be sold at a negotiated sale.

5 (e) After a sale of bonds under this section, the county auditor  
6 shall prepare a debt service schedule for the bonds.

7 (f) The general assembly covenants that it will not repeal or  
8 amend this chapter in a manner that would adversely affect owners  
9 of outstanding bonds issued, or payment of any lease rentals due,  
10 under this section.

11 Sec. 23. Except as otherwise provided in this chapter, the  
12 provisions of IC 6-6-1.1 and IC 6-6-2.5 concerning:

- 13 (1) definitions;
- 14 (2) filing of reports or returns;
- 15 (3) shrinkage allowances and remittances;
- 16 (4) penalties and interest; and
- 17 (5) refunds;

18 apply to the imposition, collection, and administration of the tax  
19 imposed by this chapter.

20 Sec. 24. Before February 1 of each year, the department shall  
21 submit a report to each county that has adopted a tax under this  
22 chapter indicating the amount credited to the county's motor fuel  
23 tax account during the preceding year.

24 SECTION 4. IC 8-14-2-4 IS AMENDED TO READ AS FOLLOWS  
25 [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) The auditor of state shall  
26 establish a special account to be called the "local road and street  
27 account" and credit this account monthly with forty-five percent (45%)  
28 of the money deposited in the highway road and street fund.

29 (b) The auditor shall distribute:

- 30 (1) to units of local government in each county, money from this  
31 the local road and street account each month; and
- 32 (2) to units of local government in a county that has adopted  
33 a county motor fuel tax under IC 6-6-12, the part of the  
34 certified distribution under IC 6-6-12-20(a)(2) from the  
35 county motor fuel tax account in the state general fund for  
36 that particular county.

37 (c) The auditor of state shall allocate to each the appropriate  
38 county the money described in this account subsection (b) on the basis  
39 of the ratio of each county's passenger car registrations to the total  
40 passenger car registrations of the state. The auditor shall further  
41 determine the suballocation between the county and the cities within  
42 the county as follows:

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1 (1) In counties having a population of more than fifty thousand  
2 (50,000), sixty percent (60%) of the money shall be distributed on  
3 the basis of the population of the city or town as a percentage of  
4 the total population of the county and forty percent (40%)  
5 distributed on the basis of the ratio of city and town street mileage  
6 to county road mileage.

7 (2) In counties having a population of fifty thousand (50,000) or  
8 less, twenty percent (20%) of the money shall be distributed on  
9 the basis of the population of the city or town as a percentage of  
10 the total population of the county and eighty percent (80%)  
11 distributed on the basis of the ratio of city and town street mileage  
12 to county road mileage.

13 (3) For the purposes of allocating funds as provided in this  
14 section, towns which become incorporated as a town between the  
15 effective dates of decennial censuses shall be eligible for  
16 allocations upon the effectiveness of a corrected population count  
17 for the town under IC 1-1-3.5.

18 (4) Money allocated under the provisions of this section to  
19 counties containing a consolidated city shall be credited or  
20 allocated to the department of transportation of the consolidated  
21 city.

22 (d) Each month the auditor of state shall inform the department of  
23 the amounts allocated to each unit of local government from the local  
24 road and street account.

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